

WHEN SELF-
PROFESSED
“FIRST
AMENDMENT
AUDITORS”
COME
CALLING

THE FIRST AMENDMENT

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* THE VIEWS EXPRESSED IN THIS PRESENTATION ARE THE PRESENTERS' ALONE, AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE SALT LAKE COUNTY DISTRICT ATTORNEY'S OFFICE OR SALT LAKE COUNTY DISTRICT ATTORNEY SIM GILL

FREEDOM IN 45 WORDS OR LESS

AMENDMENT I

CONGRESS SHALL MAKE NO LAW RESPECTING
AN ESTABLISHMENT OF RELIGION, OR
PROHIBITING THE FREE EXERCISE THEREOF; OR
ABRIDGING THE FREEDOM OF SPEECH, OR OF
THE PRESS; OR THE RIGHT OF THE PEOPLE
PEACEABLY TO ASSEMBLE, AND TO PETITION THE
GOVERNMENT FOR A REDRESS OF GRIEVANCES.

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- THE FIRST AMENDMENT ONLY APPLIES TO THE GOVERNMENT.
 - PRIVATE CITIZENS ARE NOT SUBJECT TO THE FIRST AMENDMENT.
 - PRIVATE COMPANIES ARE NOT SUBJECT TO THE FIRST AMENDMENT.

*THE SUPREME COURT RECOGNIZES SEVERAL EXCEPTIONS TO THE FIRST AMENDMENT.

WHAT DOES THAT MEAN?

ON ITS FACE, THE FIRST AMENDMENT GUARANTEES THAT CONGRESS SHALL NOT MAKE ANY LAWS THAT RESTRICT THE PEOPLE'S RIGHT TO FREE SPEECH.

- ❖ We may not like all free speech, but the fact that that is it so highly revered in the American political discourse is one of the things that truly make us great.

“Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.”

- Silence Dogood, The Busy-Body, and Early Writings
- **BENJAMIN FRANKLIN**





HOW DO WE COMPARE? (AN ACTUAL ARTICLE)

France begins jailing people for ironic comments

January 19, 2015

It may sound like an ironic joke, but it isn't. Less than a week after the massive rallies in defense of "free expression," following the murders of the *Charlie Hebdo* cartoonists, French authorities have jailed a youth for irony.

The arrest is part of a harsh crackdown on free speech in the country that has prompted criticism from national and international human rights organizations.

A 16-year-old high school student was taken into police custody on Thursday and indicted for "defending terrorism," national broadcaster France 3 reports.

His alleged crime? He posted on Facebook a cartoon "representing a person holding the magazine *Charlie Hebdo*, being hit by bullets, and accompanied by an 'ironic' comment," France 3 states.

The teen lives at home with his parents, has no prior judicial record and, according to prosecutor Yvon Ollivier quoted by French media, he does not have a "profile suggesting an evolution toward jihadism."

The boy told prosecutors that he posted the cartoon because he thought it was "funny." ...





HOW DO WE COMPARE? (ANOTHER ACTUAL ARTICLE)

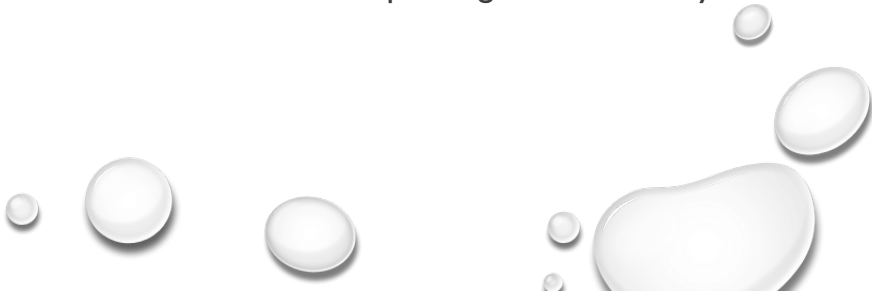
Hong Kong Police Arrest Pro-Democracy Protesters During Chinese Official Visit


May 17, 2016

Hong Kong police manhandled and arrested protesters after building a security "fortress" around a visiting Chinese official, pan-democratic politicians said on Tuesday.

At least seven people were arrested as members of the pan-democratic league of social democrats (LSD) tried to approach Zhang Dejiang, head of china's legislature, to tell him their opinions, LSD lawmaker Leung Kwok-hung said.

Meanwhile, across the harbor in Kowloon, fellow LSD members hung a huge yellow banner from beacon hill, which read: "We want true universal suffrage," echoing a previous banner hung on adjacent Lion Rock during the 2014 Occupy Central Pro-democracy movement in the city. Approaches to Lion Rock were under police guard on Tuesday. ...





HOW DO WE COMPARE? (JUST ONE MORE)

Dozens in Russia imprisoned for social media likes, reposts

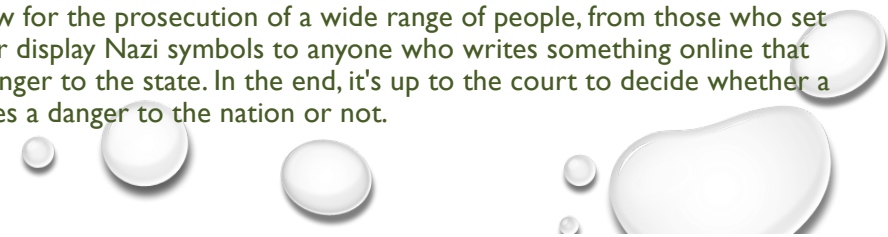
May 31, 2016

TVER, Russia (AP) — Anastasia Bubeyeva shows a screenshot on her computer of a picture of a toothpaste tube with the words: "squeeze Russia out of yourself!" For sharing this picture on a social media site with his 12 friends, her husband was sentenced this month to more than two years in prison.

As the Kremlin claims unequivocal support among Russians for its policies both at home and abroad, a crackdown is underway against ordinary social media users who post things that run against the official narrative. Here the Kremlin's interests coincide with those of investigators, who are anxious to report high conviction rates for extremism. The Kremlin didn't immediately comment on the issue.

At least 54 people were sent to prison for hate speech last year, most of them for sharing and posting things online, which is almost five times as many as five years ago, according to the Moscow-based Sova group, which studies human rights, nationalism and xenophobia in Russia. The overall number of convictions for hate speech in Russia increased to 233 last year from 92 in 2010.

A 2002 Russian law defines extremism as activities that aim to undermine the nation's security or constitutional order, or glorify terrorism or racism, as well as calling for others to do so. The vagueness of the phrasing and the scope of offenses that fall under the extremism clause allow for the prosecution of a wide range of people, from those who set up an extremist cell or display Nazi symbols to anyone who writes something online that could be deemed a danger to the state. In the end, it's up to the court to decide whether a social media post poses a danger to the nation or not.





WHAT DOES THAT MEAN TO ME?

WHAT DOES THAT MEAN TO ME? PART TWO.



WHAT DOES THAT MEAN TO ME? PART THREE.

‘First Amendment auditors’ aim to cancel cops via YouTube

By [Jerry Oppenheimer](#)

July 24, 2021 | 2:35pm | Updated

Long Island provoker Sean-Paul Reyes, 30, said he raked in \$8,000 in his first month as an “auditor,” a gig he picked up after the pandemic cost him his warehouse manager job.





WAIT. THERE'S MONEY IN THIS?

SO. MUCH. MONEY.



Gutterman has 271,000 YouTube subscribers and has traveled through 32 states with his adult son, confronting cops and public employees “in defense of our Constitution which has taken a whoopin’ in recent days, and I’m not happy about it,” he declared on his YouTube channel.

Silverthorne pays \$9,500 settlement to ‘First Amendment auditor’ following incident at post office

News [FOLLOW NEWS](#) | August 29, 2020



“TRIGGERED AND OWNED” PROVO HEALTH DEPT.



ANOTHER
EXAMPLE





SO WHAT'S A FORUM, ANYWAY?

Not all government property is treated the same for First Amendment purposes. The U.S. Supreme Court has established the public-forum doctrine to examine whether certain types of public property are open to First Amendment expressive activity.

These categories include traditional public forums, limited or designated public forums and nonpublic forums. Still other government property is not considered a forum at all.

PUBLIC FORUM

- First Amendment rights apply the most in a traditional public forum, such as a public park.
- In its 1939 decision *Hague v. C.I.O.* the U.S. Supreme Court explained: “Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”
- Strict scrutiny: compelling government interest and narrow tailoring.

LIMITED (OR DESIGNATED) PUBLIC FORUM

- In a limited public forum (such as a meeting room on a public campus or a bulletin board in the library that is frequently used by outside groups), the government designates the certain types of subject matter that can be discussed at the location.
- After the government has created such a forum, setting boundaries on classes of speakers or topics, the government must meet the standards of a traditional public forum—namely, restrictions on speech must be reasonable and viewpoint-neutral.
- The theory is that when the government opens a forum up to the public, it shouldn't be able to skew discussions by over-regulating expression.

NON-PUBLIC FORUM

- Still another category is the nonpublic forum, a place where the government has greater leeway for control, as restrictions on expression must only be reasonable and viewpoint-neutral. What this means is that the right to protest is often affected by the location and purpose of the government property where the protest takes place.
- In *United States v. Grace* (1983), the U.S. Supreme Court wrote that the “public sidewalks forming the perimeter of the Supreme Court grounds, in our view, are public forums and should be treated as such for First Amendment purposes.”
- In *U.S. v. Kokinda* (1990), the U.S. Supreme Court ruled that postal sidewalks were not public forums, writing that they do “not have the characteristics of public sidewalks traditionally open to expressive activity.” The Court clarified that “the location and purpose of a publicly owned sidewalk is critical to determining whether such a sidewalk constitutes a public forum.”

WHAT DOES THAT MEAN, IN PRACTICE?

- As the Supreme Court said in *Kokinda*, “the government’s ownership of property does not automatically open that property to the public.”
- The government has greater power to regulate expression when it acts as a proprietor controlling its internal operations than it does as a sovereign lawmaker. This means that government officials could limit protests inside a courthouse because the government has important operations to conduct. It must be able to control its operations to carry out its functions.

GOVERNMENT BUILDINGS AS LIMITED PUBLIC FORUMS

- We would argue that public areas of government buildings are, at most, limited public forums.
- In a limited public forum, the rules must be reasonable and viewpoint-neutral.
- Assuming the limitations on the forum are for the public to come do its business, and for government employees to do the government's work, then reasonable measures likely can be taken to make sure both those things can happen.

DOES THE RECORDING OF AUDIO/VIDEO MAKE A DIFFERENCE?

- By this point, the First Amendment right to record police activity in public is clearly established.
- Yet the right to record within a government building or nonpolice public employees working inside a government building is another matter. In a recent case, neither the parties nor the Court could find any controlling law on that point. See *Andrew Sheets v City of Punta Gorda, Florida* (M.D. Fla 2019).
- In general, however, it is not illegal to video people, with or without consent, when they are in a public.



BUT YOU'VE NOT PROVIDED ANY
ANSWERS!

(THAT'S TRUE.)